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In re Application of

Burgess, et al.

Application No. 10/760,655

: DECISION ON PETITION

Filed: January 17, 2004

Attorney Docket No. 300-27 DIV III

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OFFICE OF PETITIONS

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), first filed on May 12, 2005, and in duplicate on September 8, 2005.

The petition is **granted**.

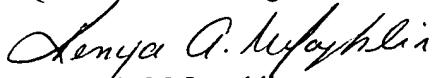
This application was held abandoned on December 21, 2004, after no reply was received to the Notice of Allowance and Issue Fee Due mailed September 20, 2004. The notice set forth a statutory period for reply of three months from its mailing date. The instant petition was filed on May 12, 2005. Petitioner maintains that the notice of September 20, 2004, was never received and provides a copy of the relevant docketing calendar as proof of the same.

Section 711.03(c)(II) of the *Manual of Patent Examining Procedure* ("MPEP") provides that in order to establish non-receipt of an Office action so as to prove that the imposition of a holding of abandonment is improper, petitioner must: 1) provide a statement to the Office indicating that the Office action was not received by petitioner; 2) include in the statement an attestation to the fact that a review of the file jacket and docket records maintained by petitioner indicates that the Office action was not received; and 3) provide a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

Petitioner has met the burden of proof as established by Section 711.03(c)(II) of the MPEP. The holding of abandonment is, therefore, withdrawn.

The application file is being forwarded to Technology Center 2800, GAU 2832 for resetting of the time period for responding to the Notice of Allowance and Issue Fee Due.

Questions concerning this decision should be directed to the undersigned at (571) 272-3222.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions